PROHIBITIONISM OR LIBERALISM? A LESSON FROM URUQUAY’S LEGALIZATION OF CANNABIS SATIVA TO NIGERIA ON THE BEST METHOD OF CURBING CRIMES

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ABSTRACT

From a traditionalist perspective, it sounds consistent with the norm to argue that prohibition is a more potent and effective means of curbing crimes than liberalism. But in the light of the seemingly incessant increase in crime rates and general deviant conducts the world over even in the face of prohibition, the efficacy of prohibition as means of crime control is severely called into question. This is especially so with regard to the prohibition of crime inducing substances like Cannabis Sativa and alcohol. In this work, guided by the examples in Uruguay and the state of Colorado where the legalization of cannabis has culminated in crime reduction, we have contended that prohibition is not an entirely effective approach to crime control and accordingly made a case for the adoption of a liberal and regulatory strategy to crime control where appropriate.

Keywords: Liberalism, Crime Control, Criminology, Jurisprudence.

1. INTRODUCTION

In the present world order, there is a raging debate as to whether a prohibitive approach is the best means of preventing crime or a liberal disposition by the state. This debate is especially trendy with respect to certain crime inducing substances like cannabis and alcohol. From a traditionalist perspective, it would readily appear that prohibition is more potent but the seemingly incessant increase in crime rates and general deviant conducts the world over even in the face of prohibition, calls to question its efficacy as a means of crime prevention thus lending credence to the advocacy for liberalism.

Generally, ‘prohibition’ refers to the forbidding or outlawing of certain conducts, behavioral patterns or activities. It means to stop from being done, to forbid, interdict, proscribe or command against.¹ From a strictly adjudicatory perspective, prohibition is a writ issued by a superior court directed to the judge and parties of a suit in an inferior court, commanding them to cease from the prosecution of the same, upon a suggestion that the cause originally, or some collateral matter arising therein, does not belong to that jurisdiction, but to the cognizance of some other court.² For the purpose of our present inquiry, we are more inclined to the general

definition. In this light, *Prohibitionism* may be seen as the movement or school of thought that advocates the outlawing of certain acts, conducts or behavioural patterns as a means of curbing crimes. It is also said to have been made popular in the US history from 1920 to 1933 when the manufacture and sale of alcoholic beverages –except for medicinal or religious purposes–were illegal.³ The 18th Amendment to the US Constitution authorized Congress to prohibit alcoholic beverages but the 21st amendment repealed this prohibition. The era of Prohibition was marked by large-scale smuggling and illegal sales of liquor, the growth of organized crime, and increased restriction on personal freedom. The prohibition movement began in the 1820s in the wake of a revival of Protestantism that viewed the consumption of alcohol as sinful and a destructive force in society. Maine passed the first state prohibition law in 1846, and other states followed in the years before the U.S. Civil War.⁴

Prohibition proved most effective in small towns and rural areas. But compliance was much more difficult in urban areas, where illegal suppliers quickly found a large demand for alcohol. Within this period of prohibition, there was a surge in organized crime⁵. In view of this, by 1966 all states had repealed laws prohibiting alcohol use.⁶ On its part, liberalism is a movement that advocates a regulatory rather than preventive approach to curbing crime. It is a political and economic philosophy or world view predicated on the ideas of liberty and freedom of choice. As a political doctrine, liberalism takes protecting and enhancing the freedom of the individual to be the central problem of politics.⁷

Essentially, liberals believe that man is naturally good and that crime is a product of poverty and deprivation. Thus society is held responsible for criminal behavior in that it fails to provide for the material needs of the individual who commits crime.⁸

2. PROHIBITIONISM OR LIBERALISM: WHICH IS THE BETTER METHOD OF CURBING CRIME?

In our considered opinion, there is no straight jacket answer to this puzzling question. The preference of one over the other is dependent on the nature of act sought to be prohibited. Not all acts in the society carry equal negative social consequences. For instance, rape and murder are far more severe criminal acts than a violation of the law which prohibits the production, sale and consumption of *Cannabis sativa*. Again, stealing is a more grievous offence than violation of the law that proscribes the manufacture and consumption of alcohol. Both the offence of rape and illegal use of cannabis are crimes but definitely not on the same pedestal of social effect and consequences. If rape or murder is in issue, prohibition is without doubt, a more effective means of crime prevention than liberalization. By no stretch of imagination can it be correctly argued that a liberal approach should be adopted towards this category of offences. To do so will mean an open invitation to anarchy. It will amount to plunging the society into a state of nature where life will undoubtedly be nasty, brutish and short. Might will sure be right and social order completely reversed. However if the act sought to be prohibited is in the mold of prevention of the use or production of *Cannabis sativa*, then, a liberal approach is preferred.

*Cannabis sativa*⁹ just like alcohol is one of the greatest crime inducing substances on the face of the earth. It is without doubt the most widely used illicit drugs the world over, the

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⁴ ibid
⁵ ibid
⁶ See notes 3 & 4
⁷ Ibid.
⁹ In Nigeria Called Indian Hemp and in the US called Marijuana
In view of its scale of usage, perceived hazard to human health and social order, there have been concerted and consistent efforts by successive governments of different countries of the world to either classify or declassify it and to control its usage. This classification is aimed at regulating the production, sale, distribution and usage of the drugs. In the United Kingdom for instance, the drug was initially classified as a ‘Class B drug’ under the Misuse of Drugs Act 1971. However, between 2004 and 2010, the drug was declassified and moved to class “C”, the direct implication being that the government thought of it as becoming less dangerous based on new scientist facts. Irrespective of this, it is believed that the current law on the use of cannabis in the UK is still highly restrictive. By reclassifying cannabis in class C, the government took away the threat of arrest of citizens caught with the drug.

In Nigeria, the planting, cultivation, importation and usage of Cannabis is regulated by the Indian Hemp Act, the Dangerous drugs Act and the National Drugs Law Enforcement Agency Act. According to section 1 of the Indian Hemp Act, cannabis means - any plant or part of a plant of the genus cannabis; or (b) the separated resin, whether crude or purified, obtained from any part of genus cannabis; or (c) any preparation containing any such resin by whatever name that plant, part, resin or preparation may be called.

The drug is strictly regulated in Nigeria and any infringement of the Act attracts stiff penalty. By section 2 of the Act, any person who knowingly plants or cultivates any plant of the genus cannabis shall be guilty of an offence and liable on conviction to be sentenced either to death or to imprisonment for a term of not less than twenty-one years. Smoking or possessing cannabis is prohibited by section 5. For ease of reference, the section stipulates:

Any person who smokes any Indian hemp; or (b) knowingly has any Indian hemp in his possession shall be guilty of an offence and liable on conviction to imprisonment for a term of not less than four years without the option of fine provided that-(i) paragraph (b) of this section shall not apply to the possession of any medical preparation of Indian hemp in circumstances such that no offence is committed in violation of the Dangerous Drugs Act.

Irrespective of this strict prohibition, the wave of drug related crimes is on the increase. Its prohibition has not deterred people from cultivating, selling or using it indiscriminately. In fact, there has been a sustained emanation of an illegal drug market and dealers. On Wednesday the 11th day of February, 2015 the Federal High Court of Nigeria, Lagos Division sentenced a 30 year old polytechnic student, Nwokeoma Adimoha, to six months imprisonment for dealing in illicit drugs. Notwithstanding, more and more Nigerians are still engaged in it. Consequent upon the above facts, some countries have already adopted a liberal approach towards cannabis the effect being that it has been legalized and regulated. One of such countries where a liberal approach has been adopted is Colombia where it is lawful to grow the plant for personal consumption as long as such consumption does not exceed 2 grams. In Czech Republic, medical use of the drugs on prescription was legalized in April, 2013. Jamaica, Netherlands, Norway and Spain have similar regulations. In the United States, the states of Washington and Colorado have also legalized marijuana for recreational or medical use.

Its illicit status or otherwise is dependent on the state of the law per country. In Uruguay for instance, its the production, sale and uses has become legalized though strictly regulated by the government. Alan Travis ‘cannabis laws eased in drug policy shakup’, the guardian. www.theguardian.com assessed 19th November, 2014.


Emma Brant “where in the world can you legally smoke Cannabis” www.bbc.co.uk.newsbeat/29834450 assessed 19th November, 2014.
global significance, Colorado governor, John Hickenlooper signed two bills on May 28, 2013 that made Colorado, a fully regulated recreational cannabis market for adults. However, under the US Federal law, Cannabis sativa is still classified as a schedule 1 controlled substance.

One country that blazed the trail in the regulation of the legal production, sale and consumption of cannabis, is Uruguay. In 2014, the country came up with new regulations on the drug after having passed into law a bill that sought to legalizes its usage. By the law, the state controls cannabis market from beginning to end, including the prices and the designated markets or pharmacies from where they can be bought. The value of the gram of marijuana sold at pharmacies in the regulated market is set by the president’s office through the control agency. Under the law, people can grow as many as six plants at home and produce a maximum of 480 grams per year. With respect to purchase, people are allowed to buy up to 40 grams of marijuana per month at state licensed pharmacies.

Indeed the argument of the Uruguan government is that during the period of prohibition, the country witnessed increased consumption of the drug and increased activities of ruthless drug traffickers who cared only about money. This experience is not exclusive to the Uruguan society, it is the same all over the world. Prohibitionism has not been an effective strategy against the use and proliferation of cannabis.

According to the FBI Uniform Crime Reporting Data, the overall crime rate in the state of Colorado since the legalization of Cannabis is down by 10.1% from 2013, while violent crime has decreased by 5.2%. The number of burglaries at dispensaries, which are cash only businesses, has reached a record low. According to the 6 months report, counties through the state issued less than 900 marijuana related citations and arrest in the first half of 2014. This put the state on track to adjudicate fewer than 3000 Marijuana related cases in 2014 as against about 5000 citations that were issued in 2013. It is estimated that between 10,000-12,000 citation were issue every years when prohibition was in effect throughout the state. Accordingly to Retired Lt. Tony Ryan who worked for Denver Police Department for 36 years and a member of the pro-marijuana legislation group Enforcement against prohibition, a reason for this is that law enforcement officers are less distracted by war against drugs which disrupts police officers’ capacity to do their job.

3. JURISPRUDENTIAL BASIS FOR LIBERALISM

Guided by the above statistics, it is our considered opinion that a liberal approach should be adopted towards cannabis. The production, sale and consumption of cannabis belong to the category of social activities that should be liberalized and controlled rather than prohibited. The Nigerian experience has shown that even with the prohibition of cannabis, its use though illegal, is on an increasing scale. Accordingly, the essence of its prohibition has been defeated. Put differently, prohibition of cannabis has not been effective against its use and misuse, not in the least. On a daily basis, drug related crimes are on the rise. In view of this, we take the liberty to assert that liberalism is the best approach in dealing with crimes relating to the consumption of cannabis.

There is a medical jurisprudential argument for the above. The jurisprudential basis of our view is hinged on the fact that every prospective or positive law should be geared towards enhancing life or indeed protecting it. The ultimate essence of law, it is reasoned, is to promote

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20 Katie Rucke ‘six months In, How has Marijuana legalization Treated Colorado?’ www.mintpressnews.com assessed 12th February, 2015.
21 ibid
22 The main drug being cannabis because of ease of access and its affordability
23 The word Positive here is restricted to mean a law that carries advantages.
and protect lives and property of the citizenry. The Utilitarian\textsuperscript{24} theory of Jeremy Bentham is very instructive in this case. Prohibition of cannabis promotes bitterness and reduces happiness. The liberal approach to its use will engender the greatest happiness to the greatest number of people. Without life and human existence, there can be no law. Law is dependent upon the continuity of life. Accordingly, it must be shaped in such a way that it is not inconsistent with life itself. It must support life except where it’s very essence is in fact to take away life, as in the case of a law prescribing death penalty. Health/life should stand above every other consideration in the evolution of law. Even in the realm of religion, health and life stand tallest in the pedestal of promises to humanity. Perhaps this is the \textit{raison d’être} behind the Biblical assertion- “beloved, I wish above all things that thou mayest prosper and be in health even as thy soul prospereth”

In specific fortification of the above, we call in aid yet another example in the Holy Bible. The Bible generally does not encourage the drinking of alcohol. However, on health ground, the Apostle Paul is said to have recommended to Timothy the use of alcohol\textsuperscript{25}. In the book of 1\textsuperscript{st} Timothy 5:23 the Apostle Paul says: “Drink no longer water, but use a little wine for thy stomach’s sake and thine often infirmities.”\textsuperscript{26} Accordingly, the question may then be asked, of what use is a law which denies the citizenry access to a substance or plant which when taken in regulated/prescribed dosage/quantity can save lives? This work contends that such a law weighs zero on the scale of utility. It is empty of good intentions and must be thrown away into the trash can of history or amended to protect lives. Medical research has shown that cannabis possesses substances of invaluable health importance to patients down with certain ailments.

A number of these ailments are either treatable with these substances from cannabis or have their effects reduced and suppressed by cannabis. Cannabis can be used in the treatment and prevention of glaucoma. According to the National Eye Institute, cannabis when smoked, lowers the Intraocular pressure (IOP) inside the eye in both those with normal pressure and those with glaucoma thus preventing blindness.\textsuperscript{27} Several studies have confirmed that cannabis possess the capacity of improving the function of the heart\textsuperscript{28} because medical marijuana strain high in cannabidiol and low in THC which have been proved to contribute to lower the symptoms of a severe heart seizure.\textsuperscript{29} In a similar vein, cannabis also can help in the control of epileptic seizure\textsuperscript{30} Researchers at the California Pacific medical centre in San Francisco reported in 2007 that cannabidiol stops cancer from spreading by turning off a gene called Id-1.\textsuperscript{31} Another very significant importance of marijuana is that it may be able to slow down the progression of Alzheimer’s disease. This is contained in a research published in a Journal called-Molecular Pharmaceuticals.\textsuperscript{32} It also eases the pains of multiple sclerosis.\textsuperscript{33} It is also helpful in other types of muscle spasm.

\textsuperscript{24} Utilitarianism a doctrine that the useful is the good and that the determining consideration of right conduct should be the usefulness of its consequences; specifically: a theory that the aim of action should be the largest possible balance of pleasure over pain or the greatest happiness of the greatest number. See http://www.merriam-webster.com/dictionary/utilitarianism.

\textsuperscript{25} See 1 Timothy 5:23

\textsuperscript{26} King James version

\textsuperscript{27} National Eye Institute ‘Glaucoma and Marijuana use’ https://nei.nih.gov assessed 20th November, 2014


\textsuperscript{32} Kim Janda ‘Marijuan may help Starve off Alzheimer’s’ www.nbcom.com accessed 17th November, 2014
Marijuana increases the efficacy of the treatment of hepatitis C and treats inflammatory bowel diseases. It also relieves arthritis discomfort. It might also eliminate Crohn’s diseases. If it is true as claimed by the various medical reports presented above that cannabis does indeed have the listed health benefits, then the continuous criminalization of its usage for any purpose whatever, calls to question the soundness of our laws. With respect to crime control, the liberal approach will in fact ensure that there is restrictive access to cannabis.

The Indian Hemp Act of Nigeria which makes a sweeping criminalization of the smoking of Indian Hemp therefore falls short of an essential role of law to wit-protecting and enhancing lives. Its prohibitive approach has failed. It is out of touch with social, scientific and extant health realities. Health related laws like the Indian Hemp Act must as matter of inevitable necessity keep pace with scientific innovations and discoveries in the very areas that they set out to prohibit.

It is conceded that at the time that the Indian Hemp Act was enacted, the intentions were noble. It was intended to amongst other things protect the health of the citizens and ensure the maintenance of law and order in the society. But it must also be conceded that at the time that the Act came into existence, there was a dearth of medical researches on the health benefits of Cannabis. Today barrage of researches published in internationally renowned Journals of medicine have now pointed to the indispensable health benefits contained in the drug. In line with this new developments, it is strongly contended that the Indian Hemp Act be amended to legalize the use of Indian hemp for medical purposes.

Unfortunately in a country like Nigeria, some of the patients down with the above ailments cannot access cannabis because they are precluded by law from accessing same or have to break the law in order to do so. Their health and lives are thus compromised on the altar of legal prohibitions. As a corollary to the above, there is in fact an economic argument behind the legalization of Cannabis. Legalization has the capacity of boosting the economy in that huge taxes can be imposed on drug cartels who deal on cannabis. Such taxes can generate billions for the economy. Already in the state of Colorado, millions of pounds worth of revenue from cannabis has been collected. In fact, if legalized, the contents can even become regulated.

4. ARGUMENTS AGAINST ADOPTING A LIBERAL APPROACH TO CANNABIS

Compelling as the arguments in favour of legalizing Marijuana for health reasons seems, a good number of people have also inputted voice of variation to it. Interestingly the opponents of legalizing marijuana also hinge their arguments largely on health grounds. One of the substances in cannabis thought to be harmful to human health is the THC (tetrahydrocannabinol). Accordingly to The Nigerian anti-psychopathic drug watch dog, the National drugs Law Enforcement agency (NDLEA), THC is ‘mood and mind altering’ whether smoked or injected in food. It also decreases short term memory capacity, creates confusion, paranoia, anxiety and restlessness.

It has also been argued that it increases heart rate which in turn increases blood pressure. The addictive tendency of the drug is also a major source of concern. It is also linked

33 Jody Corey-Bloom ‘Marijuana may ease multiple sclerosis’ww.reuters.com/article/2012/05/14/us-marijuana-sclerosis-id accessed 20th November, 2014
37 H Jade ‘a case against the legalisation of Marijuana’ www.wesessscene.co.uk accessed 21st November, 2014
with schizophrenia. It can also cause hallucination and delirium. Prolonged use of it can also cause short term memory damage. In view of the above, they have argued that cannabis should not be legalized.

5. CONCLUSION

In the course of this work, we have argued that the desirability of prohibition or liberation of acts is dependent on the nature of the act sought to be prohibited and its social consequence. Where the act in issue is one which commission carries severe social consequences like rape or murder, we are strongly of the opinion that prohibition should be adopted. However, where the acts in issue are of lesser social consequences like smoking of cannabis, prohibition proves not to be the best approach. Guided by the examples in Uruguay and the state of Colorado where the legalization of cannabis has culminated in crime reduction, we have contended that prohibition is not an entirely effective approach to crime control and accordingly made a case for the adoption of a liberal and regulatory strategy to crime control where appropriate.

Our argument inexorably leans towards advocacy for the legalization and regulation of the use of cannabis. In our view its liberalization will afford the government with the opportunity of keeping a closer watch on its production, sale and consumption. This will inexorably result in a reduction in cannabis related crimes. As alluded to in the work, according to the FBI Uniform Crime Reporting Data, the overall crime rate in the state of Colorado since the legalization of Cannabis is down by 10.1% from 2013, while violent crime has decreased by 5.2%. The number of burglaries at dispensaries, which are cash only businesses, has reached a record low. According to the 6 months report, counties through the state issued less than 900 marijuana related citations and arrest in the first half of 2014. This put the state on track to adjudicate fewer than 3000 Marijuana related cases in 2014 as against about 5000 citations that were issued in 2013. It is estimated that between 10,000-12,000 citation were issued every years when prohibition was in effect throughout the state. Beyond crime reduction, cannabis should be legalized even on medical ground. Health life being primus interperes, should stand above every other consideration in the evolution of law in the society. By no stretch of imagination can it be appropriately said that the extant Indian Helm Act in Nigeria which inhibits access to Cannabis even on medical grounds is good law. A law that inhibits the health of its citizens even under the pretext of crime control is no just law and should either be amended to promote good health or thrown into the trashcan of history. Was it not for health reasons that the Apostle Paul even recommended to Timothy, his disciple, the use of alcohol?

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